

Exhibit 75

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:14-CV-00954-LCB-JLW

STUDENTS FOR FAIR
ADMISSIONS, INC.,

Plaintiffs,

vs.

UNIVERSITY OF NORTH
CAROLINA, et al.,

Defendants.

DEPOSITION
OF
BARBARA POLK

THIS DEPOSITION CONTAINS HIGHLY CONFIDENTIAL AND
PROPRIETARY INFORMATION AND IS SUBJECT TO A PROTECTIVE
ORDER RESTRICTING PUBLIC DISCLOSURE OF ITS CONTENTS

TAKEN AT THE OFFICES OF:
UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
222 East Cameron Avenue
110 Bynum Hall
Chapel Hill, NC 27514

05-19-17
8:30 A.M.

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Court Reporter

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P.O. Box 1146
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1 tell you.

2 Q. All right. So, skipping back to when
3 you would -- when you stopped serving as interim
4 director, what position did you serve in after
5 that period?

6 A. Senior associate director.

7 Q. Is that the position that you're in
8 today?

9 A. Technically, yes.

10 Q. Okay. But have the duties changed
11 somewhat?

12 A. There's always a change in projects,
13 responsibilities; significantly, no.

14 Q. Okay. You said technically, so I'm
15 wondering what's the technical aspect of the ---

16 A. Well, if you look at my resume, it'll
17 tell you that I'm now the deputy director.

18 Technically, I was deputy director at that point.
19 I just didn't use the title.

20 Q. Okay. But the -- with respect to some
21 sort of year-to-year transition within the office,
22 the basic job description has remained the same?

23 A. Yes.

24 Q. And what is that job description? What
25 do you -- what do you in the office today?

1 A. What I do today, everything that is
2 related to evaluation of applications reports up
3 to me. And that's all areas of evaluation. And
4 then special assignments, anything else that
5 Mr. Farmer asks me to assume responsibility for.

6 Q. And does your title of deputy director
7 essentially make you the number two person in the
8 office?

9 A. Yes.

10 (EXHIBIT NUMBER 2 WAS MARKED)

11 Q. This is Exhibit 2. Take a second to
12 review this.

13 (Witness examined document)

14 A. Okay.

15 Q. You had a chance to review this?

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. And what is this document?

20 A. This was an organizational chart for our
21 Office of Undergraduate Admissions from June 2015.

22 Q. Okay. Starting on sort of the first
23 line under Mr. Farmer, there was a vacant spot in
24 June -- June 2015 for the associate director spot
25 to the right of, I guess, your -- your reporting

1 Q. When you read an application for early
2 action, you're not -- you're doing a second read?

3 A. Could be a second read or it could be a
4 third read.

5 Q. Okay. Are you doing that at any
6 particular point in the admissions process?

7 A. Yes.

8 Q. And what point is that?

9 A. During our decision review process.

10 Q. I'm sorry, I didn't mean to interrupt.

11 A. No, during our decision review process
12 that occurs immediately before we release
13 decisions.

14 Q. Is decision review also sometimes known
15 as school group review?

16 A. Yes.

17 Q. Okay. Those terms are interchangeable?

18 A. Yes.

19 Q. And what is the basic purpose of
20 decision review?

21 A. To ensure that the decisions that are
22 going out are accurate to try to eliminate any
23 human error that may have occurred. Also to
24 ensure that we're not making more offers of
25 admission than we should be, so we're not bringing

1 may be decisive in whether or not someone should
2 be offered admission or not?

3 A. There's not a situation where one factor
4 to the exclusion of other factors.

5 Q. But certainly ---

6 A. Decisive.

7 Q. Would you agree with me that sometimes
8 one particular factor can be the tipping point in
9 recommending an applicant for admission?

10 MR. SCUDDER: Objection.

11 A. Yes.

12 Q. (Mr. Strawbridge) And is race sometimes
13 that tipping point?

14 MR. SCUDDER: Object to the form.

15 A. Yes.

16 Q. (Mr. Strawbridge) You mentioned earlier
17 that before two or three years ago, you couldn't
18 remember exactly when, the ethnic makeup of the --
19 of the building class, the class that was being --
20 that was accepting their offers for admissions was
21 available to the people in the admissions office.

22 Right?

23 MR. SCUDDER: Objection.

24 A. Yes, I said it was available.

25 Q. (Mr. Strawbridge) How was it available?

In what forms?

MR. SCUDDER: What time period are we talking about?

Q. (Mr. Strawbridge) Before two or three years ago when this change was made.

A. If I'm understanding the question, you're referring to the Core Report?

A. Well, yes. And at one point you said you couldn't remember when Core Reports were available, so I don't know if the Core Report's the only in which that information was available. I'm asking what ways, Core Report or otherwise, was that information available to the people in the office?

MR. SCUDDER: Object to the form.

A. It would have been posted on a shared site.

Q. (Mr. Strawbridge) And that's a shared site that anyone could log into and check within the office?

MR. SCUDDER: Objection.

A. Prior to the last two to three years, yes, I believe so.

Q. (Mr. Strawbridge) And was that information updated on a daily basis?

A. Yes.

Q. And do you know how often that information was reviewed by people within the admissions office?

A. No.

MR. SCUDDER: Objection.

Q. (Mr. Strawbridge) Was the profile of the class that was -- as it was being, you know, admitted and people were accepting their offers, was that profiles discussed in meetings within the admissions office?

MR. SCUDDER: Objection.

A. No. We don't produce the profile during the course of the process.

Q. (Mr. Strawbridge) Well, when I say profile, I should -- I should correct. I'm not referring to a specific document. But what I'm talking about is the information that was available to anyone who logged in on the site which contained, among other things, information about the ethnic makeup of the class that had been admitted and had accepted their offers to date.

A. At what point in time?

Q. Two or three years ago. Was that same information sometimes discussed at meetings is the

1 Q. (Mr. Strawbridge) You testified that up
2 until two or three years ago, information about
3 the ethnic makeup of the class as it was admitted
4 was available to people in the admissions office.

5 A. Yes.

6 Q. And do you know in what form that was
7 available? You said you would log in to a
8 computer, right?

9 A. Correct.

10 Q. And you're familiar with the Core
11 Reports that we've talked about earlier today?

12 A. Correct.

13 Q. Was the information that they gave you
14 essentially the same information that was on the
15 Core Reports that were circulated?

16 A. Correct, it was the Core Report.

17 Q. Okay. It was the same -- the same
18 report was available to them ---

19 A. Correct.

20 Q. --- on line.

21 A. Correct.

22 Q. And then we were talking a little bit
23 about the review that Mr. Farmer does with respect
24 to some particular high schools during the
25 admissions process?

1 about an applicant when you discuss the school
2 group review

3 A. School group review, you can -- you can
4 discuss anything that's part of the application.

5 Q. You have access to the entire
6 application file?

7 A. Yes.

8 Q. Is there a summary report that's
9 prepared for school group review?

10 A. Yes, there is a report.

11 Q. And today is race included on that
12 report?

13 A. No.

14 Q. Was it previously?

15 A. Yes.

16 Q. When was that change made?

17 A. That change was made approximately -- I
18 don't remember the exact year -- about four years
19 ago, maybe five years ago. I can't -- I don't
20 remember in that ---

21 Q. Do you know why that ---

22 A. --- time period.

23 Q. Do you know why that change was made?

24 A. When we discussed it among our staff, we
25 had a recommendation made by attorneys for the

1 Office of Civil Rights and we discussed it with
2 legal counsel. Decided to make that change.

3 Q. Without disclosing to me any
4 conversations that you had with legal counsel, can
5 you share why the Department of Education made
6 that recommendation to your understanding?

7 A. I'd have to go back and talk to those
8 attorneys at the time that made the
9 recommendation.

10 Q. And so this report for school review
11 that used to include ethnicity ---

12 A. Uh-huh (yes).

13 Q. --- and now does not include
14 ethnicity ---

15 A. Uh-huh (yes).

16 Q. --- do you know, is that made available
17 to you in paper format or in electronic format?

18 A. This what, this school group report ---

19 Q. Correct.

20 A. --- made available? It is an electronic
21 format which can then be printed into paper
22 format.

23 Q. Do you typically print it?

24 A. It depends on the school.

25 Q. You occasionally will print or sometimes

1 A. Correct.

2 Q. All right. And so what are you
3 referring to when you talk about "the finishing
4 touches on the class"?

5 A. It could have been any number of things.
6 It could have been the balance between in-state
7 and out-of-state applicants.

8 Q. All right. What else could it be?

9 A. This was from 2015. I don't -- I mean
10 that's what comes to mind is where are we in-state
11 versus out-of-state?

12 Q. Could finishing touches mean affecting
13 the admissions decisions was to increase or
14 decrease the number of first-generation college
15 students in the class?

16 A. It could have been anything related to
17 the class. I don't know.

18 Q. So it could include, you know,
19 increasing the relative number of first-generation
20 students in the class.

21 A. What I take from this -- it was two
22 years ago? Hypothetically, it could have been any
23 part of the class.

24 Q. So could have been addressing any -- any
25 feature of the class.

1 to ---

2 A. Yes.

3 Q. --- review this document?

4 A. Yes, I have.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. And what is this?

8 A. This is instructions -- partial
9 instructions, comments on school group review,
10 decision review as we began the process for early
11 action applicants applying for Fall 2014.

12 Q. Okay. And is this a document that you
13 authored?

14 A. I believe so.

15 Q. Is this typical of sort of an
16 instruction document that you author at the
17 beginning of the decision review process?

18 A. That I did author. I no longer do.

19 Q. Who would be responsible for authoring
20 this now?

21 A. Jared Rosenberg.

22 Q. And this, in this case, was before the
23 beginning of the regular -- of the early action
24 decision review process?

25 A. Correct.

(EXHIBIT NUMBER 16 WAS MARKED)

(Witness examined document)

A. Okay.

Q. (Mr. Strawbridge) Had you had a chance to review this?

A. Yes.

Q. Okay. Do you recognize this document?

A. Generally, yes.

Q. Okay. And generally speaking, what do you recognize this document to be?

A. I emailed myself with some information regarding the incoming applicant class for Fall 2014.

Q. Right. And was this specifically emailed to you as part of making the wait list decisions?

A. The subject line is "Wait list update," so I would have -- my intuition would say it was related to what we might do with the waiting list.

Q. And can you just describe generally to me what you do with the waiting list? How decisions are made about when and how to admit people from the waiting list.

A. Once we know -- well, students have

1 until May 1, first-year students, to let us know
2 whether or not they're going to accept our offer
3 of admission. Once we know that, then we have an
4 idea of how many available spaces, if any, there
5 are in the upcoming class. And then we will do a
6 holistic review process to be able to offer the
7 number -- to make the number of offers that would
8 be appropriate for the number of available spaces
9 assuming there are any spaces available.

10 Q. Okay. And is the information on this
11 list information that was relevant to you in sort
12 of analyzing where the class was as you entered
13 the wait list decision process?

14 A. It would have been information that we
15 would have considered just prior to making
16 decisions about the waiting list process.

17 Q. And this is an email sent by you to you.

18 A. Correct.

19 Q. This is like a reminder to yourself as
20 to when you need to know heading into the wait
21 list process?

22 A. Correct.

23 Q. Okay. And so did you decide what
24 information to include here on this chart?

25 A. No. My best recollection is that I had

1 notes from a meeting with others in our office
2 that I scribbled and I sent myself an email so
3 that would be legible and I would remember what
4 they were.

5 Q. Okay. So this reflects the notes that
6 you took as to the ---

7 A. That's what ---

8 Q. --- information.

9 A. The best of my recollection.

10 Q. Okay. Do you remember leaving anything
11 out that you had scribbled in your notes?

12 A. I have no idea.

13 Q. Okay. Do you -- looking at this today,
14 is there other information that you typically use
15 heading into the wait list process that isn't
16 reflected here?

17 (Witness examined document)

18 A. There may be additional information that
19 would be used.

20 Q. Such as?

21 A. In looking at this, this does not seem
22 to reflect fee waiver applicants, first
23 generation, college applicants. It does have some
24 reference to international, so yes, there may be
25 some other elements such as those.

1 Q. And how do you -- or at least how does
2 UNC, to your understanding, go about determining
3 whether or not a critical mass exists under that
4 term?

5 A. I don't think that we actually know. If
6 the critical mass exists, I think steps are
7 ongoing to talk with students, to talk with
8 faculty, to get feedback from the University
9 community as to how people feel. But there's no
10 concrete definition. There's nothing that says
11 when you get to X you will have reached critical
12 mass.

13 Q. And in your view, is this ultimately a
14 subjective determination for the students to make
15 as to when they feel comfortable about speaking
16 out loud as a representative of a group?

17 MR. SCUDDER: Object as to form.

18 A. I think if we're talking about students'
19 comfort level and whether they feel they're
20 representing themselves or representing a group,
21 only the students can tell us that.

22 Q. (Mr. Strawbridge) So do you think it's
23 very possible that, for example, a group could
24 have -- a particular ethnic group could constitute
25 50 percent of the population on campus but still

1 you recall having any discussions of critical mass
2 at UNC in any way, shape or form between 2003 and
3 the working group on race-neutral alternatives?

4 A. I don't recall one way or the other.

5 Q. Is there anybody within the admissions
6 department today who is -- who has the main
7 responsibility with respect to determining if
8 critical mass exists with respect to the racial
9 groups on campus?

10 A. I would say no, it's not up to the
11 admissions office to determine whether the
12 University has reached critical mass.

13 Q. Do you know whether anyone within the
14 University as a whole has that responsibility?

15 A. I don't think any one person would have
16 that responsibility.

17 Q. Do you know whether any offices in the
18 -- at the University undertake an effort to define
19 or measure critical mass?

20 A. I think there have been different
21 working groups that have talked about critical
22 mass. I've never heard of any that has tried to
23 define in any way other than the way in which I
24 previously have defined it.

25 Q. Do you know whether anyone who's

1 involved with the Committee on Race-Neutral
2 Strategies is tasked with defining or measuring
3 critical mass upon the UNC campus?

4 A. No, I don't know that there's anyone on
5 that committee that is charged with defining
6 critical mass for the UNC campus.

7 Q. And who's the chairperson of that
8 committee?

9 A. Abigail Panter.

10 Q. The next note that you have here refers
11 to the "JMU Disadvantaged quota," if I'm reading
12 that correctly.

13 A. That's the way I would read it too.

14 Q. And by "JMU," do you understand that
15 that refers to James Madison University?

16 A. That would be my best guess.

17 Q. Okay. And do you know what
18 disadvantaged quota is referring to?

19 A. Right now I do not recall.

20 Q. Do you know whether the Committee on
21 Race-Neutral Strategies ever looked at any system
22 used by James Madison University?

23 A. I don't recall.

24 Q. Do you know what's meant by "bring in
25 grad schools and professional schools," which is

1 or when will reach critical mass, but to explore
2 how we might go about doing that in such a way
3 that would allow us to maintain or increase both
4 diversity on campus and academic quality.

5 Q. Okay. And is it your understanding that
6 even if the University has obtained critical mass,
7 it may continue to use raise to increase diversity
8 on campus?

9 MR. SCUDDER: Objection.

10 A. I don't know that I have -- have an
11 understanding of if it is ever determined that we
12 have received critical mass, whether that in and
13 of itself would cause us to no longer consider
14 race.

15 Q. (Mr. Strawbridge) Do you think it can
16 ever be determined?

17 MR. SCUDDER: Objection to the
18 form. Go ahead. You can answer.

19 A. I think it would -- I think it's
20 difficult. I don't -- I don't know whether it
21 ever could be or could not be. I think it's --
22 it's a difficult question.

23 (Off-record comments)

24 Q. Do you know roughly how long the working
25 group on race-neutral alternatives met?

1 A. We started in December of '13. We may
2 have had conversations for several months, I
3 believe, and took a bit of a break and then came
4 back together.

5 Q. Okay. And do you know why you took a
6 bit of a break?

7 A. I think we took a bit of a break based
8 on this case, when the University was sued. A
9 chance to regroup.

10 Q. And do you know how long that break was?

11 A. I want to say it was several months. I
12 don't -- I don't recall the exact timing.

13 (EXHIBIT NUMBER 24 WAS MARKED)

14 (Witness examined document)

15 A. Okay. I've reviewed this document.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Was this information that was prepared
19 in advance of another meeting of the race-neutral
20 working group?

21 A. Yes.

22 Q. And do you recall this information being
23 distributed at that meeting?

24 A. Yes.

25 Q. Okay. And was this information used to

1 frame the discussion at the meeting of the race
2 working neutral group (sic)?

3 A. Yes.

4 Q. Or race-neutral working group, I'm
5 sorry.

6 On the fir -- on the second part of this
7 handout, "Questions to consider before we start,"
8 there's a question about "how many race-neutral
9 alternatives should we pursue and how many cohorts
10 of data do we need to analyze?" Do you see that
11 language?

12 A. Yes.

13 Q. And did I read that correctly?

14 A. Yes.

15 Q. Okay. Do you recall what the working
16 group determined with respect to how many race-
17 neutral alternatives it should pursue?

18 A. I recall there being a conversation that
19 court orders or the direction of the Court was not
20 that we had to pursue every conceivable
21 alternative, but every reasonable alternative. I
22 don't recall us ever having a number saying we're
23 going to pursue three or we're going to pursue
24 five. I remember us talking about pursuing
25 possibilities that seem reasonable, to look at

1 possibilities that other states had considered in
2 their areas to see if other ideas came to mind for
3 the group.

4 Q. And there are some potential race-
5 neutral alternatives given in bullet point number
6 2 in this part of the memo. Do you see those?

7 A. Yes.

8 Q. Do any of those appear to reflect the
9 document we looked at earlier regarding partnering
10 with low income schools to try to increase
11 enrollment by the students at those schools?

12 A. I don't think there was a direct
13 connection between the two. There are things
14 here, bullet point b), bullet point c), that could
15 be related to, but I don't think that was an
16 intentional relationship.

17 Q. In fact, do you recall any discussion by
18 -- or work by the race-neutral -- by the working
19 group on race-neutral alternatives to actually
20 explore further this possibility of partnering
21 with certain high schools in low income areas?

22 A. We, I think, had some conversation about
23 it. I don't remember it as being a major topic of
24 conversation.

25 Q. And what discussion do you remember

1 the committee?

2 A. It was a joint presentation. I believe
3 Dr. Kretchmar did the initial presentation of the
4 report and I did more of the follow-up questions.

5 Q. And do you remember what the tenor of
6 those questions were in any broad sense?

7 MR. SCUDDER: Object to the form.

8 A. No. I believe the questions were
9 possibly a little bit random about different parts
10 of the report and what we meant, what we referred
11 to, explanations of the report.

12 Q. (Mr. Strawbridge) And to the best of
13 your knowledge, was the report that you presented
14 at this meeting, you know, substantially similar
15 to the longer draft that we looked at earlier?

16 A. To the longer draft, yes.

17 Q. And as part of the presentation of that
18 report, do you know whether you discussed the zip
19 code option with the faculty committee?
20 report. I don't recall the specifics that were
21 discussed in the meeting itself.

22 Q. Do you recall, sitting here today,
23 whether or not there was any discussion of the
24 partnership program we talked about earlier with
25 respect to -- that we looked at the proposal to